

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff

v.

JAY MICHAUD,

Defendant.

NO. CR15-05351 RJB

STIPULATED MOTION FOR ENTRY OF
DISCOVERY PROTECTIVE ORDER

(FILED UNDER SEAL)

Noting Date: January 5, 2016

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, Matthew P. Hampton and Andre M. Penalver, Assistant United States Attorneys for said District, Defendant, JAY MICHAUD, and his attorneys, Colin Fieman and Linda Sullivan, file this motion for entry of a Discovery Protective Order.

Defendant Jay Michaud was charged by Indictment on July 23, 2015, with Receipt and Possession of Child Pornography, in violation of Title 18, United States Code, Section 2252(a)(2) and (a)(4)(B). These charges followed a search of his residence and seizure of computers and digital devices that contained illicit child pornography. The FBI identified Michaud as a suspect during a larger investigation into a child

1 pornography website, “Website A” (not the true name of the website), which operated on
2 the anonymous Tor network.

3 In response to a discovery request, the government has agreed to provide to the
4 defense and its expert certain information related to a court-authorized Network
5 Investigative Technique (“NIT”). This material includes law enforcement sensitive items
6 related to an ongoing investigation and material that may reveal sensitive information
7 about investigative techniques used in an ongoing investigation. It may also reveal
8 information concerning investigative techniques that may be used in future
9 investigations. The current investigation continues into users of “Website A,” which is a
10 website that operated on an anonymizing network for the purpose of distributing child
11 pornography. The operation involves the identification and prosecution of hundreds of
12 targets across the United States who used Website A to access, post, and download child
13 pornography. Access to the government’s investigative materials including search
14 warrant affidavits, reports of investigation, witness statements, court orders, and seized
15 electronic data could seriously jeopardize those continuing investigations by identifying
16 the true name of Website A and thus the alert potential targets of the law enforcement
17 investigation and prosecution. Further, dissemination of these discovery materials would
18 reveal highly sensitive investigative methods employed by law enforcement agents to
19 identify Website A users.

20 The government requests that the NIT Discovery Protective Order require that the
21 discovery items identified as NIT Protected Material, or information contained therein,
22 are not disseminated to anyone other than defense counsel, members of the defense team
23 within the office of the Federal Defender, and Vlad Tsyklevich—an expert retained to
24 assist the defense team. As proposed in the Protective Order, defense counsel and his
25 litigation team may show and display the items listed and marked as NIT Protected
26 Material, or information contained therein, to the Defendant, but may not provide a copy
27 of the NIT Protected Material, or information contained therein, to the Defendant or third
28 parties to keep and maintain in their possession.

1 Any NIT Protected Material, or information contained therein, that is filed with
2 the Court in connection with pre-trial motions, trial, sentencing, or other matter before
3 this Court, shall be filed under seal and shall remain sealed until otherwise ordered by
4 this Court. This does not entitle either party to seal their filings as a matter of course.
5 The parties are required to comply in all respects to the relevant local and federal rules of
6 criminal procedure pertaining to the sealing of court documents.

7 The parties further request that the protective order require that upon termination
8 of this case, any NIT Protected Material, or information contained therein, along with any
9 copies, be returned to the United States or destroyed.

10 Any violation of any term or condition of the Proposed Order by the Defendant,
11 his attorney(s) of record, Mr. Tsyklevich, any member of the defense team, or any
12 representative for the Department of Justice, may be held in contempt of court, and/or
13 may be subject to monetary or other sanctions as deemed appropriate by this Court.

14 This Motion and the proposed Protective Order is submitted for the purpose of
15 insuring that sensitive information contained in the discovery and/or any matters
16 occurring before the grand jury are not disseminated to third parties. For these reasons,
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1 the United States and Jay Michaud request this Court to authorize the proposed
2 Discovery Protective Order.

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4 Dated this 5th day of January, 2016.

5 Respectfully submitted,

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8 /s/ Matthew P. Hampton
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17 Attorneys for Defendant

18 /s/ Colin Fieman
19 LINDA SULLIVAN
20 COLIN FIEMAN
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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant.

s/ Rebecca Eaton
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